

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TYRONE LAMONT REED, SR.,

Petitioner,

v.

MARTIN BITER,

Respondent.

Case No. [16-cv-6192-TEH](#)

ORDER DISMISSING CASE AND
DENYING CERTIFICATE OF
APPEALABILITY

Petitioner, Tyrone Lamont Reed, Sr., filed a pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254. He challenges a 2009 conviction in Alameda County.

I

Court records indicate that Petitioner already filed a habeas petition in this Court challenging the same conviction. Reed v. Biter, Case No. 13-cv-5545-TEH. That case was denied on the merits on February 10, 2016. On November 8, 2016, the Ninth Circuit denied a request for a certificate of appealability. This case appears to be a successive petition.

"A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed . . ." 28 U.S.C. § 2244(b)(2). This is the case unless,

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral

review by the Supreme Court, that was previously unavailable; or

(B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2).

"Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). Petitioner has not shown that he received authorization from the Ninth Circuit. This case is dismissed without prejudice and Petitioner may proceed with a successive petition if he obtains permission from the Circuit.

II

For the foregoing reasons and for good cause shown,

The petition is DISMISSED without prejudice for the reasons stated above. Because reasonable jurists would not find the result here debatable, a certificate of appealability ("COA") is DENIED. See Slack v. McDaniel, 529 U.S. 473, 484-85 (2000) (standard for COA). The clerk shall close the file.

IT IS SO ORDERED.

Dated: 12/19/2016



THELTON E. HENDERSON
United States District Judge